

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.23.101, 32.23.102,	)	AMENDMENT
32.23.201, 32.23.301, 32.24.301,	)	
32.24.506, 32.24.511, 32.24.520,	)	NO PUBLIC HEARING
32.24.523 pertaining to purchase and	)	CONTEMPLATED
resale of milk	)	

TO: All Concerned Persons

1. On November 14, 2009, the Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on November 6, 2009 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; phone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

32.23.101 DEFINITIONS (1) through (1)(c) remain the same.

(d) "Excess milk" means the amount of milk delivered to a plant by a producer in excess of his/her specified quota.

(e) through (g) remain the same.

(h) "Surplus" means ~~that amount of milk produced that exceeds the class I and II needs of the market.~~ all raw milk under contract to a pool handler that is over and above the pool handler's class I and II market needs, as defined in 81-23-101 (1)(g), but excludes cream and fat products which are derived from processing.

(i) remains the same.

(j) "Hauler" means an independent ~~businessman~~ business person who owns his/her own trucking equipment and who contracts directly with the producers for hauling their milk from farm to plant. A "distributor or plant hauler" means a processing plant which provides trucking equipment to haul producer milk from farm to plant.

(k) "Jobber" means any independent ~~businessman~~ business person other than a store, wholesale grocery purchasing organization, or wholesale grocery broker, who has no financial connection with any distributor other than acquiring the distributor's packaged product and distributing and selling the same, and whose business practices and policies are within his/her exclusive province to establish, and not subject to any influence or control from the distributor.

(l) through (o) remain the same.

AUTH: 81-23-103, 81-23-402, MCA  
IMP: 81-23-103, 81-23-402, MCA

32.23.102 TRANSACTIONS INVOLVING THE PURCHASE AND RESALE OF MILK WITHIN THE STATE (1) through (3) remain the same.

(4) Each distributor must maintain a record of butterfat tests of each producer's milk ~~or cream~~ covering each pay period and provide each producer with each butterfat test result made for that producer as provided in (7) of this rule. Such record shall be kept on file for two years and be made available to any authorized agent of the ~~department~~ bureau upon request.

(5) On or before the ~~tenth~~ 26th day of each month, the bureau will publish a post for public inspection in the main office of the department an original notice of the class I, II, and III prices to be paid ~~producers~~ for grade A milk by distributors during the next calendar month. In addition thereto and on the same day, the bureau will cause a correct copy of the ~~posted~~ published notice to be mailed to each distributor, producer-distributor, and producer licensed under the Act. The notices must contain not only statements of the correct prices to be paid, but statements of the applicable Chicago area average prices relied upon, and the mathematical computations by which Montana prices were arrived at.

(6) remains the same.

(7) Distributors purchasing milk ~~or cream~~ from producers shall render to producers not later than the 15th day of each month, statements showing each of the following items for the prior calendar month:

(a) through (o) remain the same.

(8) On or before the eighth business day after the end of each month, in detail and on forms supplied by the ~~department~~ bureau, each distributor must submit to the ~~department~~ bureau a report of the information required by ARM ~~32-23-512~~ 32.24.512, and a report of:

(a) and (b) remain the same.

(9) On or before the 15th day of each month, each distributor must submit to the ~~department~~ bureau a duplicate or other correct copy of its producer payroll for the preceding month, indicating total producer deliveries and payment for the preceding month for each producer supplying the plant.

(10) Each distributor whose place of business is outside the state of Montana, but who comes under the jurisdiction of the Milk Control Act, and of this rule by virtue of his distributing milk within the state, either in bulk or packaged form, must file with the ~~department~~ bureau on forms supplied by the ~~department~~ bureau, on or before the 15th day of each month, a report of sales of such milk during the preceding month.

(a) Each import jobber who purchases milk from sources outside the state of Montana for resale in Montana must file with the ~~department~~ bureau, on forms supplied by the ~~department~~ bureau, on or before the 15th day of each month, a report of sales of such milk during the preceding month.

(b) Each producer-distributor shall file with the ~~department~~ bureau, on forms supplied by the ~~department~~ bureau, on or before the 15th day of each month, a

report of his class I sales and disposition of production in excess of class I sales during the preceding month.

(11) The ~~department~~ bureau shall cause periodic audits of the books and records of distributors to be made to verify the utilization of all milk reported pursuant to ARM 32.24.512, thereby establishing payment or nonpayment of producer prices fixed by rules of the board.

(a) remains the same.

(b) Upon completion of each audit, the distributor will be furnished with an audit summary and commentary with respect to audit results and with indicated producer adjustments, if any, for each month audited. All underpayment settlements must be paid to producers on or before the next regular pay date and proof of such settlement payments must be filed with the ~~department~~ bureau by the distributor forthwith.

(c) At any time a distributor is unwilling or unable to reconcile the audit results with rules of the board ~~and/or department~~ it may request a review of the audit by the bureau. The time limitation for final settlement payment to producers will be stayed until ten days after such review is completed and the distributor has received notice of the bureau's decision.

(d) Within ten days after the distributor receives notice of the bureau's decision it may file written application for appearance before the ~~department~~ board ~~at its offices in Helena, Montana~~ to review the decision of the bureau. The time limitation on final settlement payment to producers will be further stayed until the review by the ~~department~~ board is completed. After such a review, the ~~department~~ board will make official findings and conclusions and order, to be effective upon the issuance thereof.

(12) All milk and its component quantities of skim milk and butterfat sold by a producer or a producer marketing organization which is required to be reported pursuant to ARM 32.24.512 will be classified by the ~~department~~ board pursuant to 81-23-101, MCA, for the purpose of establishing compliance with minimum producer prices fixed by applicable rule of the board, to-wit:

(a) through (13) remain the same.

(14) Except for persistent repetition of the cases set forth in (13) of this rule, no producer's contract or purchasing agreement, whether express or implied, may be terminated by a distributor except for cause after notice and hearing by the ~~department~~ board in accordance with the rules and procedures prescribed by the Montana Administrative Procedure Act.

(15) No producer may terminate his contract or selling agreement with any distributor except by giving at least 30 days' WRITTEN notice to the distributor and to the ~~department~~ board of his intention to terminate. However, nothing in this rule prevents a distributor and a producer from providing by WRITTEN contract or agreement for a ~~shorter or longer~~ period of notice. Termination does not preempt a distributor's obligation to pay ~~The producer must be paid~~ in full by the 15th day of the month following the month of such termination.

(16) remains the same.

AUTH: 81-23-104, MCA  
IMP: 81-23-103, 81-23-402, MCA

32.23.201 REGULATION OF UNFAIR TRADE PRACTICES

(1) and (2) remain the same.

(3) It is the intention of the ~~department~~ board that if any provision of the rule, or the application of such provision to any person or circumstance shall be held invalid, the remainder of this rule, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(4) remains the same.

AUTH: 81-23-104, MCA

IMP: 81-23-103, MCA

32.23.301 LICENSEE ASSESSMENTS (1) through (1)(e) remain the same.

(i) This fee, pursuant to 81-23-202(4)(a), MCA, must be paid quarterly before January 15, April 15, July 15, and October 15 for the prior quarter of each year.

AUTH: 81-23-104, 81-23-202, MCA

IMP: 81-23-103, 81-23-202, MCA

32.24.301 PRICING RULES (1) through (5)(a) remain the same.

(b) The Milk Control Bureau will use the federal order fat and skim prices to calculate the producer prices. Federal order fat and skim prices ~~shall be~~ are announced on the Friday previous to the 23rd of each month unless the 23rd falls on a Friday. ~~Montana's producer prices will be announced on or about the 5th of the subsequent month (depending upon weekends and holidays) and will be effective for the next following month.~~ Montana will follow the same schedule.

(6) Prices paid producers for class II milk will be the last spray process nonfat dry milk solids price per pound quote ~~for the prior to the 20th of the month~~, Central States area, as most recently reported by the United States Department of Agriculture, plus a factor of \$.0125 per pound for freight, multiplied by 8.2 (which is the amount of solids not fat in skim milk), plus the last Chicago area grade AA butter price quote ~~for prior to the 20th of the month~~ as most recently reported by the United States Department of Agriculture, less an adjustment factor of \$.0895, multiplied by 4.2 (which is the amount of butter in pounds, which can be produced from 100 pounds of 3.5% milk), less a make allowance of 8.5%. In the case of milk containing more or less than 3.5% butterfat, the differential to be employed in computing prices will be determined by multiplying the above-mentioned Chicago area butter price by .111 and the resulting answer from this calculation shall be rounded to nearest half cent (\$0.005).

(7) Prices paid to producers for class III milk will be the last Chicago area grade AA butter price quote ~~for prior to 20th of~~ the month as most recently reported by the United States Department of Agriculture, less an adjustment factor of \$.0895, less 10% and, in addition, when skim milk is utilized in this classification by any distributor, the last spray process nonfat milk solids price per pound quote ~~for prior to the 20th of the month~~, the Central States area, as most recently reported by the

United States Department of Agriculture, plus a factor of \$.0125 per pound for freight, multiplied by 8.2, less 17%.

(8) Producers who ship in excess of any beneficial use, and that milk is shipped to a different market and classified by statute and rule as class III, shall receive a price for that milk based on calculations in ARM ~~32.24.522~~ 32.24.513.

(9) and (10) remain the same.

(11) Monthly price announcements for class I, II, and III producer milk pricing will be computed by the ~~mMilk eControl bBureau~~ in accordance with this pricing rule ~~and published by the 10th of each month on the Friday previous to the 23rd of each month unless the 23rd falls on a Friday and published on or before the 26th on the month for the following month.~~ The minimum producer price will be uniform and identical throughout the state of Montana.

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

32.24.506 PRODUCER COMMITTEE (1) remains the same.

(2) The producer committee shall consist of one eligible producer for each 10% of the total August pool raw milk represented by each pool plant with a minimum of at least one committee representative per pool plant. Calculation is done by using the total August pool of each pool plant's milk receipts, divided by ~~each pool plant's receipts~~ the total August pool milk, rounded to the nearest 10%, and divided by ~~.4~~ .01.

(3) through (5) remain the same.

(6) The producer committee members will serve terms of two years each, ~~but not more than two consecutive terms~~ and have the option of serving additional two year terms. Vacancies on the committee will be filled in the same manner as the original appointment. ~~Successors will complete the term of the original committee member.~~ Each committee member will be selected by all eligible pool producer representatives of each pooled plant.

(7) remains the same.

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

32.24.511 POOLING PLAN DEFINITIONS The following definitions apply in subchapter 5 unless the context otherwise requires:

(1) "Excess milk over quota" means milk received ~~for~~ from a producer that is over his established quota. This milk is priced as excess milk.

(2) through (13) remain the same.

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

32.24.520 DEFINITIONS The following definitions apply to ARM 32.24.523, 32.24.524, and 32.24.525 unless the context otherwise requires:

(1) through (7) remain the same.

(8) "Surplus" milk" is means all raw milk under contract to a pool handler that is over and above the pool handler's class I and II market needs, as defined in 81-23-101(1)(g), MCA, but excludes cream and fat products which are derived from processing.

AUTH: 81-23-104, MCA  
IMP: 81-23-103, MCA

32.24.523 MARKETING OF SURPLUS MILK TO NONPOOL HANDLERS

- (1) through (4)(a) remain the same.  
(b) an administrative fee not exceeding \$.12 .02/CWT; and  
(c) through (5) remain the same.

AUTH: 81-23-104, MCA  
IMP: 81-23-103, MCA

REASON: The changes proposed bring the rules in compliance with SB 286 passed by the last legislative session which clarifies the jurisdiction of the Milk Control Board and bring the computation of milk prices to the producer in line with the price announcements of federal orders. The department estimates the changes will affect approximately 80 persons and will result in no change in annual revenue.

4. Effective date shall be December 1, 2009.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to [cmackay@mt.gov](mailto:cmackay@mt.gov) to be received no later than 5:00 p.m. November 13, 2009.

6. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. November 13, 2009.

7. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25, based upon the population of the state.

8. An electronic copy of this proposal notice is available through the department's site at [www.liv.mt.gov](http://www.liv.mt.gov).

9. The Montana Department of Livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the area of interest that the person wishes to receive notices regarding. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Christian Mackay"; or e-mailed to [cmackay@mt.gov](mailto:cmackay@mt.gov). Request forms may also be completed at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay  
Christian Mackay  
Executive Officer  
Board of Livestock  
Department of Livestock

BY: /s/ George H. Harris  
George H. Harris  
Rule Reviewer

Certified to the Secretary of State October 5, 2009.